

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE NUISANCE**

EXHIBIT 5

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on June 4, 2019, the following order was made and entered:

State of West Virginia ex rel.
Amerisourcebergen Drug Corporation,
Cardinal Health, Inc., and
McKesson Corporation,
Petitioners

vs.) No. 19-0210

Honorable David W. Hummel, Jr., Judge of the
Circuit Court of Marshall County, et al.,
Respondents

ORDER

On March 8, 2019, the petitioners, Amerisourcebergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation, by counsel A.L. Emch and Gretchen M. Callas, Jackson Kelly PLLC; Russell D. Jessee and William D. Wilmoth, Steptoe & Johnson PLLC; Harry G. Shaffer III and Todd A. Mount, Shaffer & Shaffer, PLLC; Jeffrey M. Wakefield, Flaherty Sensabaugh Bonasso PLLC; Daniel C. Cooper and Jamison H. Cooper, Cooper Law Offices, PLLC; and Brian A. Glasser, Steven R. Ruby, and Raymond S. Franks II, Bailey Glasser LLP, presented to the Court a petition praying for a writ of prohibition to be directed against the respondent, the Honorable David W. Hummel, Jr., Judge of the Circuit Court of Marshall County, as therein set forth.

Thereafter, on May 13, 2019, the respondents, Brook County Commission, et al., by counsel Clayton J. Fitzsimmons, Robert P. Fitzsimmons, and Mark A. Colantonio, Fitzsimmons Law Firm, PLLC; Samuel D. Madia, Shaffer Madia Law, PLLC; Paul J. Napoli and Joseph L. Ciaccio, Napoli Shkolnik, LLP; Jonathan E. Turak, Gold, Khourey & Turak; and Daniel J. Guida, Guida Law Office, filed a response to the petition.

On the same day, May 13, 2019, Thirty West Virginia Counties and Forty-Four West Virginia Cities, by counsel Paul T. Farrell, Jr., Greene, Ketchum, Farrell, Bailey & Tweel, LLP;

and Anthony J. Majestro, Powell & Majestro, PLLC, filed an amici curiae brief in support of the respondents. The West Virginia Municipal League and the County Commissioners' Association of West Virginia, by counsel Mark W. Matkovich, White Law Offices, PLLC; and Eldon A. Callen, filed a motion for leave to join in the brief of amici curiae also on May 13, 2019. The motion of the West Virginia Municipal League and the County Commissioners' Association of West Virginia is hereby granted.

Upon consideration and review of the petition and all pleadings filed herein, the Court is of the opinion that a rule should not be awarded, and the writ prayed for by the petitioner is hereby refused. Justice Workman disqualified.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court

